

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: June 18, 2021

CASE NO(S): PL180416

The Ontario Municipal Board (the “OMB”) and the Local Planning Appeal Tribunal (the “LPAT”) is continued under the name Ontario Land Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Local Planning Appeal Tribunal in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: CRH Canada Group Inc.
Subject: Request to amend the Official Plan - Failure of Township of Tiny to adopt the requested amendment
Existing Designation: 'Rural', 'Environmental Protection II' and 'Mineral Aggregate Resource II'
Proposed Designated: 'Mineral Aggregate Resources I'
Purpose: To permit the expansion of the existing gravel pit
Property Address/Description: 2 Darby Road
Municipality: Township of Tiny
Approval Authority File No.: '12/D09' (DS #36243)
OMB Case No.: PL180416
OMB File No.: PL180416
OMB Case Name: CRH Canada Group Inc. v. Tiny (Township)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: CRH Canada Group Inc.
Subject: Application to amend Zoning By-law No. 06-001 and 30-77 - Refusal or neglect of Township of Tiny to make a decision
Existing Zoning: Rural (RU) Zone, Rural (A) Zone and Holding Low Hazard (OS4) Zone
Proposed Zoning: Mineral Aggregate (MAR) Zone and Extractive Industrial (M5) Zone
Purpose: To permit the expansion of the existing gravel pit

Property Address/Description: 2 Darby Road
 Municipality: Township of Tiny
 Municipality File No.: '12/D14' (DS#36242)
 OMB Case No.: PL180416
 OMB File No.: PL180417

PROCEEDING COMMENCED UNDER subsection 11(5) of the *Aggregate Resources Act*, R.S.O. 1990, c. A.8, as amended

Referred by: CRH Canada Group Inc.
 Objector: Blake & Brenda Anderson
 Objector: Peter & Jeanette Anderson
 Objector: Erin Archer
 Objector: Murray Archer; and others
 Applicant: Jessica Ferri
 Subject: Application for a Class A licence for the removal of aggregate

Property Address/Description: 2 Darby Road
 Municipality: Township of Tiny
 LPAT Case No.: PL180416
 LPAT File No.: MM210011

Heard: June 8, 2021 by video hearing

APPEARANCES:

Parties

Counsel

CRH Canada Group Inc.
 ("Appellant")

Jonathan W. Kahn
 Brittiny Rabinovitch

Township of Tiny ("Township")

Sarah Hahn

Federation of Tiny Township
 Shoreline Associations ("FoTTSA")

Joseph Castrilli
 Ramani Nadarajah

MEMORANDUM OF ORAL DECISION DELIVERED BY T. PREVEDEL ON JUNE 8, 2021 AND ORDER OF THE TRIBUNAL

[1] This was the eighth Case Management Conference ("CMC") with respect to appeals by CRH Canada Group Inc. under s. 22(7) and s. 34(11) of the *Planning Act*

regarding the failure of the Township of Tiny to make a decision on applications for amendments to the Township's Official Plan ("OP") and Zoning By-Law ("ZBL").

[2] This was also the first CMC dealing with the referral of the application for a license pursuant to s. 11(5) of the *Aggregate Resources Act* ("ARA").

[3] The purpose of these applications is to permit the expansion of an existing gravel pit for the subject property located at 2 Darby Road, known as the Teedon Pit, in the Township of Tiny.

[4] An associated application has been made for a License under the ARA. This application was submitted to the Ministry of Natural Resources and Forestry in late February 2020 before the COVID 19 Emergency Order had been declared. The ARA referral was submitted to the Tribunal on February 25, 2021, and the intent is to have the appeals on the proposed amendments to the Official Plan and Zoning By-law heard at the same time as the referral under the ARA.

[5] Mr. Kahn submitted a draft Procedural Order for the Parties to review in advance of this CMC, recognizing that the Issues List may require some refinement depending on what other concerns are raised. There have been no comments from the other Parties as yet, but this issue will be dealt with later in this Decision.

[6] Ms. Hahn told the Tribunal that she will also be representing the County of Simcoe at these proceedings. She indicated that the County has expressed an interest in this matter and will be auditing the proceedings but does not intend to take an active role.

[7] Of the list of 39 Objectors to the proposed expansion of the Teedon Pit, only two individuals were in attendance at the CMC; John D. Morgan and Yanina Zainkovskaya.

[8] Mr. Castrilli noted that a few of the Objectors were also members of the FoTTSA. When questioned by the Tribunal whether the Federation would be advocating on

behalf of some of these individual members, he stated he would need to get direction from the Association.

[9] Mr. Castrilli also noted that Judith Grant was listed as an Objector, on behalf of the FoTTSA. Ms. Grant is still involved with the Federation as a past President, but the Tribunal was requested to substitute the Federation's name for Ms. Grant. This substitution was granted on consent of the Parties.

[10] Ms. Hahn also stated that the Township has also formally responded as an Objector.

PARTY AND PARTICIPANT STATUS REQUESTS

[11] The Tribunal notes that there are currently 13 Participants that have registered through previous CMC's, listed as follows: Peter Anderson, Erin Archer, Rene Ariens, Balm Beach Community Association, David Barkey, Lynne Gibson, Mathew Lund, Nancy McBride, John D. Morgan, Bonnie Pauze, Jessica Staples-Campitelli, Christopher Williams and Anne Ritchie Nahuis.

[12] The Tribunal received two additional requests for participant status at the CMC.

[13] Ms. Zainkovskaya was listed as one of the 39 Objectors. Under s. 11(6) of the ARA, an Objector automatically has Party status. This was explained to Ms. Zainkovskaya. When the difference between Party status and Participant status was explained to her, she requested Participant Status.

[14] William Shotyk also requested Participant Status. He is with the University of Alberta and has been involved with testing the water at the site for the past 20 years.

[15] The Tribunal notes that Mr. Morgan was already registered as a Participant.

[16] On consent of the Parties, Participant Status was granted to Ms. Zainkovskaya

and Mr. Shotyk.

[17] The Tribunal was asked by Ms. Nahuis if all previous Participants were listed for future notice of the upcoming CMC of **July 23, 2021**. The Case Coordinator will ensure that proper notice goes out to all interested individuals.

PENDING NOTICE OF MOTION

[18] Mr. Castrilli advised the Tribunal that leave to appeal was granted by the Environmental Review Tribunal on April 19, 2021 with respect to CRH's application for a permit to take water for their existing operation on 2 Darby Road. His request to the Tribunal is to consolidate this pending appeal with the current appeals before the Tribunal. Ms. Hahn confirmed that the Township was also granted leave to appeal.

[19] Mr. Kahn does not support this consolidation. He stated that the permit to take water is related to the existing operation and not to the proposed expansion, and that although there is overlapping hydrogeological evidence, the Ministry of the Environment is not a Party to this proceeding.

[20] In order to not unduly delay this process, it was suggested that the Motion could be dealt with at the upcoming CMC scheduled for **Friday, July 23, 2021**.

[21] On consent of the Parties, it was agreed that the Notice of Motion would be submitted to the Tribunal by the FoTTSA on or before **Monday, June 28, 2021**, and the Appellant would have until **July 16, 2021** to submit their response, and FoTTSA would have until **Friday, July 21, 2021** to submit a reply if required.

[22] Mr. Castrilli stated that the Notice of Motion and accompanying Affidavit would also include a memo of legal argument.

[23] A brief discussion ensued regarding the option for evening sessions of the Tribunal and the potential format of the Hearing given the relaxing of COVID

restrictions. This matter can be discussed in more detail at the **July 23, 2021** scheduled CMC.

[24] The hearing is scheduled to proceed by video on **Friday, July 23, 2021 at 10 a.m.**

[25] Parties and participants are asked to log into the video hearing at least **15 minutes** before the start of the event to test their video and audio connections:

<https://global.gotomeeting.com/join/468514341>

Access code: 468-514-341

[26] Parties and participants are asked to access and set up the application well in advance of the event to avoid unnecessary delay. The desktop application can be downloaded at [GoToMeeting](https://app.gotomeeting.com/home.html) a web application is available:

<https://app.gotomeeting.com/home.html>

[27] Persons who experience technical difficulties accessing the GoToMeeting application or who only wish to listen to the event can connect to the event by calling into an audio-only telephone line: **Toll Free: 1 (888) 455-1389 or: +1 (647) 497-9391.** **The access code is 468-514-341.**

[28] Individuals are directed to connect to the event on the assigned date at the correct time. It is the responsibility of the persons participating in the hearing by video to ensure that they are properly connected to the event at the correct time. Questions prior to the hearing event may be directed to the Tribunal's Case Coordinator having carriage of this case.

ORDER

[29] The Tribunal orders that Ms. Zainkovskaya and Mr. Shotyk be granted Participant Status to this Hearing.

[30] The Tribunal orders that the Federation of Tiny Township Shoreline Associations be added to the list of Objectors in lieu of Ms. Grant.

[31] The Notice of Motion for consolidation will be dealt with at the upcoming CMC scheduled for **Friday, July 23, 2021**.

[32] This Member is not seized, however will stay involved with case management, schedule permitting.

"T. Prevedel"

T. PREVEDEL
MEMBER

Ontario Land Tribunal

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The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal.